

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 1178

INTRODUCER: Criminal Justice Committee and Senator Richter

SUBJECT: Drone Surveillance

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1178 creates a new section of law which specifies when it is lawful or unlawful to capture an image using a drone.

The bill provides twenty-two specific lawful uses of drones and of the images captured by drones.

The bill defines the term “image” and adopts the definition of “drone” found in s. 943.50(2)(a), F.S. The bill also defines the term “conduct surveillance” which means to monitor, track, or follow another person with the intent to intrude on the solitude, seclusion, or privacy of a person or a person’s property, if the intrusion is the primary intent and effect, and the use is not incidental to an otherwise lawful use.

The bill makes unlawful: capturing images of an individual or of privately owned real property, with the intent to conduct surveillance on the individual or property; and the possession, disclosure, display, distribution, or other use of unlawfully captured images.

Unlawfully captured images or images that are incidental to the lawful capturing of an image may not be used as evidence in criminal, juvenile, civil, or administrative proceedings or actions. Such images are not subject to discovery, subpoena, or other means of legally-compelled release.

The bill requires the Department of Transportation to review potential impacts on public safety originating from commercial applications of unmanned aerial systems. The department is also directed to coordinate with the Office of Insurance Regulation to address the appropriate amount of liability insurance that should be carried by operators of unmanned aerial systems and report to the presiding officers of the Legislature and the Governor by January 1, 2016.

The bill becomes effective on October 1, 2015. It contains a severability clause.

II. Present Situation:

The definition of “drone” provided in s. 934.50(2)(a), F.S., is a powered aerial vehicle that:

- Is unmanned;
- Is capable of flying autonomously or being piloted remotely;
- Uses aerodynamic forces to provide lift;
- Can be expendable or recoverable; and
- Can carry a lethal or nonlethal payload.

Section 934.50, F.S., limits the use of drones by state and local law enforcement. Currently there is not any such limitation of or provisions related to the non-law enforcement use of drones in Florida law.

Drones typically range in size from wingspans of 6 inches to 246 feet and can weigh from approximately 4 ounces to over 25,600 pounds.¹ They may be controlled manually or through an autopilot which uses a data link to connect the drone’s pilot to the drone.² Although “drone” has become almost a household word, the devices are also called Unmanned Aerial Vehicles (UAV) and Unmanned Aerial Systems (UAS).

Drones have been used in a multitude of tasks by U.S. government agencies and other public entities including law enforcement. The U.S. Customs and Border Patrol began using them in 2004.³ In February 2010, the U.S. Customs and Border Patrol began operating a center in Cocoa Beach flying eight drones along Florida’s shorelines and the Gulf Coast.⁴ Other documented non-military tasks include earthquake damage assessment at Japan’s Fukushima power plant, volcano activity assessment of Mount St. Helens in Washington for the U.S. Geological Survey, and surveying wild fires in Texas.⁵ At the University of Florida, the Unmanned Aerial Systems Research Group has been developing an 11 pound drone having a 9 foot wingspan, which is called “Nova 2.1.” According to researchers, it can be used to safely and accurately gather data that will be helpful to wildlife biologists and many others.⁶

¹ 14 CFR Part 91, Docket No. FAA-2006-25714, Department of Transportation, Federal Aviation Administration, Unmanned Aircraft Operations in the National Airspace System, February 6, 2007.

² *Id.*

³ *Unmanned Aerial Vehicles Support Border Security*, Customs and Border Protection Today, July 2004, www.cbp.gov/xp/CustomsToday/2004/Aug/other/aerial_vehicles.xml.

⁴ Howard Altman, *Space Florida Probing Drone’s Future Potential*, Tampa Bay Online, August 5, 2012, www2.tbo.com/news/breaking-news/2012/aug/05/space-florida-probing-drones-future-potential-ar-453511/.

⁵ James Chiles, *Drones for Hire*, Air & Space Smithsonian, January 2013, www.airspacemag.com/flight-today/Drones-for-Hire-179517781.html.

⁶ James Dean, *Florida Hopes to Fill Its Skies with Unmanned Aircraft*, Florida Today, June 23, 2012, <http://usatoday30.usatoday.com/news/nation/story/2012-06-23/increased-drone-use-privacy-concerns/55783066/1>; UF

The drone industry is motivated to move into more civilian markets.⁷ It also appears that civilian markets are ready to adopt the drone industry. According to the Consumer Electronics Association, drone shipments will increase from 250,000 units in 2014 to nearly a million in 2018.⁸

In February 2012, Congress passed the FAA Modernization and Reform Act of 2012, which required the FAA to safely open the nation's airspace to drones by September 2015.⁹ The FAA authorized the testing of UAS at six sites around the country as part of its efforts. Amazon Logistics, Inc. was issued an "experimental airworthiness certificate" by the FAA on March 19, 2015, which will enable Amazon to conduct research and development and crew training using its own UAS at one of the FAA testing sites.¹⁰ Amazon is working on a package delivery system called "Prime Air."¹¹

Although it seems to be outside the congressional mandate and beyond the scope of the FAA's airspace-safety responsibilities, the FAA notified Congress in late 2012 that "privacy issues" are a concern as drones are integrated into the airspace.¹² On February 15, 2015, the President of the United States issued a Memorandum entitled Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems. Among other directives, the Presidential Memorandum requires the Department of Commerce, through the National Telecommunications and Information Administration, and in consultation with other interested agencies, to initiate a multi-stakeholder engagement process within 90 days to develop a framework for privacy, accountability, and transparency issues concerning the commercial and private use of UAS in the National Air Space.¹³

Also on February 15, 2015, the FAA issued its Proposed Rule for Operation and Certification of Small Unmanned Aircraft Systems.¹⁴ The proposed rule, upon implementation, will enable small UAS operation to begin for civil non-hobby or non-recreational use.

Team's Work Pays Off With Unmanned-flight System that Captures Valuable Data, Phys Org, October 20,2010, <http://phys.org/news/2010-10-uf-team-unmanned-flight-captures-valuable.html>.

⁷ *Drones for Hire*, Air & Space Smithsonian, James Chiles, January 2013, www.airspacemag.com/flight-today/Drones-for-Hire-179517781.html.

⁸ Harvard Business News, March 2, 2015, Larry Downes, "What's Wrong with the FAA's New Drone Rules."

⁹ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; *Drones in Domestic Surveillance Operations*, Congressional Research Service, September 6, 2012, www.fas.org/sgp/crs/natsec/R42701.pdf.

¹⁰ <http://www.faa.gov/news/updates> (last visited March 19, 2015). Additionally, realtors and real estate-related drone operators in Texas, California, and Pennsylvania have been issued testing certificates by the FAA.

¹¹ <http://www.inman.com/2015/03/09/faa-approves-more-real-estate-drone-flights> (visited March 12, 2015).

¹² <http://www.theatlantic.com/business/archive/2015/02/faa-drone-regulations> (visited March 12, 2015).

¹³ A Bloomberg report quotes the FAA Acting Chief as having written to members of the Congressional Unmanned Systems Caucus: "However, increasing the use of UAS in our airspace also raises privacy issues, and these issues will need to be addressed as unmanned aircraft are safely integrated." Alan Levine, *FAA Going Slow on Drones as Privacy Concerns Studied*, Bloomberg, November 26, 2012, <http://go.bloomberg.com/political-capital/2012-11-26/faa-going-slow->.

¹⁴ President's Memorandum issued February 15, 2015, The White House, Office of the Press Secretary. <https://www.whitehouse.gov/the-press-office/2015/02/15/presidential-memorandum-promoting-economic-competitiveness-while-safegua> (last visited April 1, 2015).

¹⁴ Federal Register, Vol. 80, No. 35.

III. Effect of Proposed Changes:

Lawful Uses of Drones Designated

The bill provides the following twenty-two specific lawful uses of drones and of the images which may be captured:

- Professional or scholarly research and development connected with a college or university;
- In airspace designated by the Federal Aviation Administration as a test site or range for drones;
- Military operations, missions, or exercises;
- Images captured by a satellite or drone for mapping purposes;
- Images captured by or for an electric or natural gas utility for limited purposes;
- Images captured with the consent of the owner or lawful occupant of the real property;
- Use by law enforcement in conformity with s. 934.50(4), F.S.;
- Law enforcement use related to disasters, catastrophes, and states of emergency;
- At the scene of potential or actual hazardous material spills;
- Images captured for the purpose of fire suppression;
- Rescuing persons from imminent danger;
- Real estate marketing, sale, or financing;
- Persons and property within 25 miles of the United States border;
- In public places, from a height of no more than 8 feet above ground level, without amplification;
- Public property or persons on public property;
- By owners or operators of oil, gas, water, or other type of pipeline or facility for purposes of inspection, maintenance, or repair;
- For purposes of oil pipeline safety and rig protection;
- For port authority security and surveillance;
- Claim handling or insurance underwriting practice and procedure;
- Images captured by the owner or developer of real property for development, marketing, sale or financing of the property;
- For any other lawful commercial use by a commercial entity; or
- As a part of a commercial drone service that is lawful and permitted under federal law or with authorization from the FAA.

“Image” is defined by the bill as “any capturing of sound waves; thermal, infrared, ultraviolet, or visible light; or other electromagnetic waves, odor, or other conditions existing on or about real property in this state or an individual located on that property.” “Drone” is defined by reference to the definition in s. 934.50, F.S.

The bill also defines the term “conduct surveillance” which means to monitor, track, or follow another person with the intent to intrude on the solitude, seclusion, or privacy of a person or a person’s property, if the intrusion is the primary intent and effect, and the use is not incidental to an otherwise lawful use.

The provisions of the bill do not apply to manufacture, sale, assembly, or distribution of drones.

Prohibited Use of Drones

The bill makes it illegal for a person to capture an image of an individual or of privately owned real property, with the intent to conduct surveillance on the individual or property. A person may not possess, disclose, display, distribute or otherwise use an image that is illegally captured as prohibited by the bill.

Protection of Unlawfully or Incidentally Captured Images

The bill provides that unlawfully captured images or images that are incidental to the lawful capturing of an image may not be used as evidence in criminal, juvenile, civil, or administrative proceedings or actions. Such images are not subject to discovery, subpoena, or other means of legally-compelled release.

The images may, however, be released and used as evidence in a prosecution for any violation of the newly-created s. 934.55, F.S.

The effective date of the bill is October 1, 2015.

The bill contains a severability clause.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Although unquantifiable, the industry and commercial applications deemed “lawful” by the bill should experience a positive fiscal impact.¹⁵

¹⁵ <http://www.theatlantic.com/business/archive/2015/02/faa-drone-regulations>. (visited March 12, 2015).

C. Government Sector Impact:

The Office of Insurance Regulation estimates that the cost to do the research required by the bill will be \$50,000.

The Department of Transportation estimates that the study required by the bill will cost the department \$500,000.

VI. Technical Deficiencies:

On line 151, after the word “juvenile” it is suggested that the word “delinquency” be inserted for clarification.

It is suggested that the term “within 25 miles of the United States border” be drafted as “outside the United States border by up to 25 miles” to more clearly effectuate the apparent purpose.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 330.60 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Criminal Justice on April 13, 2015:**

- Deletes Section 2 of the original bill. This section contained the requirement that law enforcement agencies report certain drone-related information to FDLE annually. Section 2 required FDLE to summarize the information and report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Section 2 also required FDLE to develop guidelines for the use of drones by law enforcement.
- Creates four additional lawful uses of drones. These are:
 - For claim handling or insurance underwriting practice and procedure;
 - Images captured by the owner or developer of real property for development, marketing, sale, or financing of the property;
 - For any other lawful commercial use by a commercial entity; or
 - As a part of a commercial drone service that is lawful and permitted under federal law or with authorization from the FAA.
- Eliminates all criminal law violations, defenses to those violations, and all civil remedies from the original bill.
- Provides a definition for the term “conduct surveillance.”
- Requires the Department of Transportation to review potential impacts on public safety originating from commercial applications of unmanned aerial systems. The department is also directed to coordinate with the Office of Insurance Regulation to

address the appropriate amount of liability insurance that should be carried by operators of unmanned aerial systems and report to the presiding officers of the Legislature and the Governor by January 1, 2016. The research and report will result in a fiscal impact to the Office of Insurance Regulation and the Department of Transportation.

- Contains a severability clause.

B. Amendments:

None.